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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/009,590	04/03/2002	Zhi Xian Chen	2577-124A	1775

6449 7590 03/04/2009  
ROTHWELL, FIGG, ERNST & MANBECK, P.C.  
1425 K STREET, N.W.  
SUITE 800  
WASHINGTON, DC 20005

EXAMINER
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KUBELIK, ANNE R

ART UNIT	PAPER NUMBER
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1638

NOTIFICATION DATE	DELIVERY MODE
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03/04/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PTO-PAT-Email@rfem.com

<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	Application No. 10/009,590	Applicant(s) CHEN ET AL.	
	Examiner Anne R. Kubelik	Art Unit 1638	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 21 January 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: \_\_\_\_\_.
- Claim(s) objected to: \_\_\_\_\_.
- Claim(s) rejected: 1-2, 4-5, 8-11, 14, 18-20, 22-23, 25, 27, 30
- Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_
13. ☐ Other: \_\_\_\_\_.

/Anne R. Kubelik/  
Primary Examiner, Art Unit 1638

Continuation of 3. NOTE: New issues: Replacement of ammonium nitrogen with Asp and glu would require a new search.

Continuation of 11. does NOT place the application in condition for allowance because: 103 of over Rangan in view of Gawal further in view of Price further in view of Tull

Applicant urges that Rangan uses  $\text{NH}_4\text{NO}_3$ , not  $\text{KNO}_3$  in the germinating medium, and uses 1.01 g of  $\text{KNO}_3$ , not the 3.8 g claimed. This is not persuasive because one of skill in the art would have been motivated to try 3.8 g  $\text{KNO}_3$  in the course of optimization of experimental parameters.

Applicant urges that the rejection does not provide a specific reference to Rangan's 5-36 days for development of calli- 3-4 weeks is used instead. This is not persuasive because Rangan teaches development of embryogenic calli in suspension over 5-36 days in column 11, lines 25-35 (20 hours plus 4 days is 5 days; 200 hours plus 28 days is 36 days).

Applicant urges that Rangan uses a suspension culture for proliferating the embryogenic callus, not inducing its formation. This is not persuasive because Price and Gawal each teach culturing callus in hormoneless suspension culture to induce formation of embryogenic callus.

Applicant urges that Rangan does not disclose the advantage of using a short suspension culture to induce embryogenic callus. This is not persuasive because the rejection is based on a combination of references; further, it would be obvious to try different lengths of time of each culturing step in the course of optimization of experimental parameters.

Applicant urges that there is no teaching in Rangan to use asparagine and/or glutamine in place of inorganic nitrogen. This limitation requires a new search.

Applicant urges that Rangan teaches use of sucrose as the carbon source and teaches away from using glucose in claims 1 and 19. This is not persuasive because indicating a particular carbon source is not the same thing as teaching away from a carbon source; teaching away would be saying not to use a particular carbon source, which Rangan does not do.

Applicant urges that Gawal only relates to somatic embryogenesis and not plant transformation, and does not teach a short culture time. This is not persuasive because Gawal was cited for teachings in the art about cotton tissue culture. Gawal need not teach transformation. Rangan teaches a short culture time.

Applicant urges that there is no motivation to combine Rangan and Gawal because each culture different materials. This is not persuasive because one of skill in the art would have been motivated to use suspension culture in the embryogenic callus formation step because Gawal teaches that suspension culture was preferable.

Applicant urges that Price relates to somatic embryogenesis and not plant transformation; and price teaches hormone use. This is not persuasive because while price found that suspension cultures without hormones did not initiate as many embryos, those that were initiated were more superior (pg 306, left column, paragraph 5). Price does not teach that hormones are required.

Applicant urges that in Price the media with Glu or Asp still had inorganic ammonium. This is not persuasive because this new limitation requires a new search.

Applicant urges that a Rangan did not use the teachings of Price, it is telling. This is not persuasive because there is no evidence that Rangan used Price's media and it failed to work.

Applicant urges that Tull and Rangan use of different sugars, and as Tull cites Rangan, it is evidence that one of skill in the art would not have used these methods. This is not persuasive because this is not a teaching against combining the references.

Applicant urges that the references use lower pHs, and thus teach away from the claimed pH. This is not persuasive because the references do not teach that one should not use a higher pH.

Applicant urges that the art cited teaches unpredictability and teaching away. This is not persuasive because because the art teaches a wide range of conditions produce good results and does not teach that a particular conditions should never be used.